Supreme Court, U.S.
FILED
DEC 20 1999
CLERK

No. 99-680

IN THE

Supreme Court of the United States

OCTOBER TERM, 1999

Maria Hsia,

Petitioner,

v.

United States of America,

Respondent.

On Petition for a Writ of Certiorari To the United States Court of Appeals For the District of Columbia Circuit

BRIEF OF THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS AS AMICUS CURIAE IN SUPPORT OF THE PETITION

RONALD H. WEICH
Counsel of Record
CARLOS T. ANGULO
ZUCKERMAN, SPAEDER, GOLDSTEIN, TAYLOR & KOLKER, L.L.P.
1201 Connecticut Ave., N.W.
Washington, D.C. 20036
(202) 778-1800

LISA B. KEMLER
NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS
108 North Alfred Street
Alexandria, VA 22314
(703) 684-8000

Counsel for Amicus Curiae
National Association of Criminal Defense Lawyers

13pp

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

INTEREST OF THE AMICUS CURIAE..... 1

REASONS FOR GRANTING THE WRIT 2

I. REVIEW IS WARRANTED BECAUSE THE COURT OF APPEALS' DEFINITION OF "WILLFULLY" IN THIS CASE IS INCONSISTENT WITH THIS COURT'S DECISION IN *BRYAN V. UNITED STATES*..... 3

II. REVIEW IS FURTHER WARRANTED BECAUSE THE CIRCUITS ARE DIVIDED ON HOW TO INTERPRET 18 U.S.C. § 2(b)'s WILLFULNESS REQUIREMENT IN THE ELECTION LAW CONTEXT 5

CONCLUSION 8

TABLE OF AUTHORITIES

Page(s)

CASES

Bryan v. United States, 524 U.S. 184 (1998) 3, 4, 5, 8

Buckley v. Valeo, 424 U.S. 1 (1976) 7

Cheek v. United States, 498 U.S. 192 (1991) 6-7

Ratzlaf v. United States, 510 U.S. 135 (1994) 6

Screws v. United States, 325 U.S. 91 (1945) 5

United States v. Curran, 20 F.3d 560 (3d Cir. 1994) 5, 6, 8

United States v. Gabriel, 125 F.3d 89 (2d Cir. 1997) 6

United States v. Goland, 897 F.2d 405 (9th Cir. 1990) 8

United States v. Hopkins, 916 F.2d 207 (5th Cir. 1990) 7-8

United States v. Trie, 21 F. Supp. 2d 7 (D.D.C. 1998) 6

STATUTES

18 U.S.C. § 2(b) 2, 3, 4, 6, 7, 8

18 U.S.C. § 924 ..... 3, 8

18 U.S.C. § 1001 ..... 2, 4, 7

MISCELLANEOUS

U.S. Department of Justice, *Federal Prosecution of Election Offenses* (5th ed. 1988) 4

U.S. Department of Justice, *Federal Prosecution of Election Offenses* (2d ed.1980).....7

U.S. Department of Justice, *Federal Prosecution of Election Offenses* (4th ed. 1984).....7

IN THE

Supreme Court of the United States

October Term, 1999

No. 99-680

Maria Hsia,

Petitioner,

v.

United States of America,

Respondent.

On Petition for a Writ of Certiorari To the United States Court of Appeals For the District of Columbia Circuit

---

BRIEF OF THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS AS AMICUS CURIAE IN SUPPORT OF THE PETITION

INTEREST OF THE AMICUS CURIAE[1]

The National Association of Criminal Defense Lawyers ("NACDL") is a non-profit corporation with a membership of more than 10,000 attorneys and 28,000

---

[1] Counsel for the parties did not author this brief either in whole or in part and no person or entity, other than the *amicus curiae*, its members, and counsel, have made a monetary contribution to the preparation or submission of the brief. Letters from the parties consenting to the filing of this brief have been filed with the Clerk of the Court in accordance with Supreme Court Rule 37.2(a).

affiliate members in all 50 states. The American Bar Association ("ABA") recognizes the NACDL as an affiliate organization and awards it full representation in the ABA's House of Delegates. The NACDL was founded in 1958 to promote research in the field of criminal law, to disseminate and advance knowledge of the law in the area of criminal practice, and to encourage the integrity, independence, and expertise of defense lawyers in criminal cases. Among the NACDL's objectives are to ensure the proper administration of justice and to ensure that criminal statutes are properly construed and applied.

REASONS FOR GRANTING THE WRIT

This case presents a question of fundamental importance to the administration of federal criminal law: what does the word "willfully" mean in 18 U.S.C. § 2(b) and 18 U.S.C. § 1001, two statutes increasingly relied on by federal prosecutors? The court of appeals' reading of "willfully" in this case is inconsistent with this Court's interpretation of that statutory term. Moreover, the courts of appeals are divided on how to interpret the willfulness requirement in the causing false statements/election law context presented here. Each of these discrepancies on its own militates in favor of granting certiorari in this case; taken together, they make the case for review by this Court particularly compelling.

I. REVIEW IS WARRANTED BECAUSE THE COURT OF APPEALS' DEFINITION OF "WILLFULLY" IN THIS CASE IS INCONSISTENT WITH THIS COURT'S DECISION IN *BRYAN V. UNITED STATES.*

The court of appeals below, reversing the district court, determined that the element of willfulness in 18 U.S.C. § 2(b) does not require the government to show that Petitioner knew her conduct was unlawful – only that Petitioner "intentionally caused" false statements to be made by others to the Federal Election Commission. Pet. App. 5a-6a. That reading of "willfully" is inconsistent with this Court's general understanding of that term, as recently set forth in *Bryan v. United States,* 524 U.S. 184 (1998), and warrants this Court's review. *See* Petition at 17, n. 19.

The *Bryan* case involved the willfulness requirement in 18 U.S.C. § 924, a statute dealing with licensing requirements for firearms dealers. In considering whether that statute required knowledge of criminality, this Court held that "[a]s a general matter, when used in the criminal context, a 'willful' act is one undertaken with a 'bad purpose.' [Footnote omitted.] In other words, in order to establish a 'willful' violation of a statute, 'the Government must prove that the defendant acted with knowledge that his conduct was unlawful.'" 524 U.S. at 191 (*quoting Ratzlaf v. United States*, 510 U.S. 135, 137 (1994)). This is the precise reading of "willfulness" that the court of appeals rejected here. *See* Pet. App. 6a ("We believe that the government need not prove that [Petitioner] knew her conduct to be unlawful . . . .")

In explaining the intent needed to demonstrate a "willful" violation of criminal law, the *Bryan* Court compared a "knowing" violation of the law with a "willful" violation. Proof of the former, it noted, "merely requires proof of knowledge of *the facts* that constitute the offense." 524 U.S. at 193 (emphasis added). Proving the latter, however, requires evidence of more than mere factual knowledge; rather, "[t]he jury must find that the defendant acted with an evil-meaning mind, that is to say, that he acted with knowledge that his conduct was unlawful." *Ibid.*

The court of appeals in this case disregarded the distinction between "knowing" and "willful" violations of the law, interpreting the willfulness requirements of 18 U.S.C. § 2(b) to require only proof of the fact that "the [Petitioner] intentionally caused [the false] statements to be made by another." Pet. App. 6a. This is the kind of factual knowledge that gives rise to a "knowing" violation of the law, not the kind of legal knowledge that the *Bryan* Court found necessary to a more rigorous claim of "willful" violation of the law.[2]

---

[2] The false statements statute, 18 U.S.C. § 1001, upon which petitioner's indictment was predicated, requires proof of both "knowing" and "willful" conduct to prove a violation. The court of appeals in this case, therefore, had to consider a statute that by its very terms differentiated between "knowing" and "willful" violations of the law at the same time it considered how to interpret the willfulness requirement of 18 U.S.C. § 2(b). Yet the court of appeals failed to acknowledge that distinction when it came to interpreting the latter statute, and in essence read the willfulness requirements out of both statutes. The Department of Justice, in the very election law context at issue here, has noted that a "knowing and willful" requirement imposes a particularly high bar to proving intent. U.S. Department of Justice, *Federal Prosecution of Election Offenses* 75 (5th ed. 1988).

The court of appeals' deviation from the *Bryan* formulation warrants this Court's review. Such review is needed to confirm this Court's interpretation of willfulness in that case – an interpretation that properly holds the government to a more exacting standard of proof -- and to provide the lower courts with guidance as to the meaning of a term that appears with great frequency in the federal criminal laws. *See Screws v. United States*, 325 U.S. 91, 153-54(1945)(Roberts, Frankfurter, and Jackson, JJ., dissenting)("[The] requisite mental ingredient [required for criminal liability] is expressed in various forms in criminal statutes, of which the word 'willfully' is one of the most common.")

II. REVIEW IS FURTHER WARRANTED BECAUSE THE CIRCUITS ARE DIVIDED ON HOW TO INTERPRET 18 U.S.C. § 2(b)'s WILLFULNESS REQUIREMENT IN THE ELECTION LAW CONTEXT

Even if, as a general matter, proof of a willful violation of the law need not include the defendant's knowledge of the unlawfulness of his conduct, the courts of appeals are squarely divided as to whether such knowledge is required to prove a willful violation in the federal election law context in which this case arises. The D.C. Circuit's determination in this case that knowledge of unlawfulness is not required in a "causing false statements to the FEC" case directly contradicts the decision in *United States v. Curran*, 20 F.3d 560 (3d Cir. 1994), in which the Third Circuit, considering the precise false statements/election law charges raised in this case, held that the government must in fact prove that the defendant intended to violate the law. 20 F.3d at 569. The district court in this case followed *Curran*. The court of appeals declined to do so, concluding that *Curran*

deviated "too far" from "the general rule that ignorance of the law is no excuse," Pet. App. 6a, and choosing instead to follow the Second Circuit's interpretation of "willfully" in *United States v. Gabriel*, 125 F.3d 89 (2d Cir. 1997), a non-election law case. *Ibid.*

The division between the courts of appeals on this issue is manifest, and derives directly from the different emphases placed by the courts on the election law context in which both *Curran* and the instant case arose. The courts that have interpreted 18 U.S.C. § 2(b) to require knowledge of criminality in the election law context – such as the Third Circuit in *Curran* and the District Court in this case – have pointed out that the federal election laws, like other laws that the courts have read to require knowledge of criminality, form a complex regulatory framework that criminalizes activity that is not "obviously 'evil' or 'inherently bad'." *Curran*, 20 F.3d at 569 (*quoting Ratzlaf v. United States*, 510 U.S. at 137); *United States v. Trie*, 21 F.Supp. 2d 7, 15 (D.D.C. 1998)). To these courts, the danger that "the complexity and nature of federal election law might ensnare innocent individuals," *United States v. Trie*, 21 F.Supp. 2d at 15, dictates that the government prove knowledge of criminality in election law cases arising under 18 U.S.C. § 2(b). The D.C. Circuit in this case, by contrast, ignored the election law context in favor of the "natural reading of mens rea" that ignorance of the law is no excuse. Pet. App. 6a.

This Court has on several occasions found that the "willful" violation of a complex regulatory statute requires proof that the defendant knew his or her conduct was illegal. *See, e.g., Ratzlaf v. United States*, 510 U.S. 135 (1994)(currency structuring violation); *Cheek v. United*

States, 498 U.S. 192 (1991)(tax violation).[3] The court of appeals in this case, however, interpreted 18 U.S.C. § 2(b)'s willfulness requirement in a vacuum, all but ignoring the election law context in which the case arises. This approach is inconsistent with this Court's precedents, and also with the manner in which the Third Circuit determined the proper intersection between 18 U.S.C. § 2(b) and federal election law. Certiorari is necessary here to resolve this division of opinion.

Election laws are not only complex; they also implicate First Amendment values. *See Buckley v. Valeo,* 424 U.S. 1, 41 (1976)(noting that federal election law context is "permeated by First Amendment interests"); U.S. Department of Justice, *Federal Prosecution of Election Offenses* 40-41 (4th ed. 1984) (recognizing the "presence of First Amendment overtones in nearly all FECA violations.") The constitutionally sensitive nature of the conduct regulated here is an additional reason for strictly interpreting the willfulness element of 18 U.S.C. §§ 2(b) and 1001 when used to criminalize campaign-related activity.

It is particularly imperative that this Court speak to this question in light of the increasing frequency with which 18 U.S.C. § 2(b) is being applied in the election law context generally and the "conduit contribution" context specifically. Over the past decade, the Department of Justice has moved away from prosecuting election law cases under the Federal Election Campaign Act, and has instead employed the false statements statute and 18 U.S.C. § 2(b) as its prosecutorial weapons of choice. *See, e.g., United States v. Hopkins*, 916

---

[3] The Department of Justice itself has recognized that "[t]here is nothing inherently wrongful" or "socially deviant" about the conduct prohibited under the federal election laws. U.S. Department of Justice, *Federal Prosecution of Election Offenses* 30 (2d ed. 1980).

F.2d 207 (5th Cir. 1990); *United States v. Goland,* 897 F.2d 405 (9th Cir. 1990); *United States v. Curran, supra.* The instant case is one of several brought by the Department of Justice's Campaign Financing Task Force, which was created to investigate election law violations during the 1996 election cycle. The Task Force has brought 19 indictments and informations, many of which have featured "causing false statements to the FEC" charges like the one at issue in this case. *See* Petition at 24. Resolution of the glaring circuit split highlighted here will provide prosecutors and courts with needed guidance as to the proper application of 18 U.S.C. § 2(b) in election law cases, [4] and will therefore conserve judicial resources and ensure proper administration of the federal criminal laws.

CONCLUSION

For all of the above reasons, the National Association of Criminal Defense Lawyers urges this Court to grant the petition for a writ of certiorari.

---

[4] It bears noting that this Court granted certiorari in *Bryan v. United States*, *supra*, because of a similar division between the circuit courts of appeals over the issue of the proper definition of "willfully" in a federal criminal statute. *See* 524 U.S. at 190 (noting disagreement between the Eleventh and Second Circuits regarding the definition of "willfully" in 18 U.S.C. § 924).

Respectfully submitted,

RONALD H. WEICH
Counsel of Record
CARLOS T. ANGULO
ZUCKERMAN, SPAEDER,
GOLDSTEIN, TAYLOR
& KOLKER, L.L.P.
1201 Connecticut Ave., N.W.
Washington, D.C. 20036
(202) 778-1800

LISA B. KEMLER
NATIONAL ASSOCIATION
OF CRIMINAL DEFENSE
LAWYERS
108 North Alfred Street
Alexandria, VA 22314
(703) 684-8000

Counsel for Amicus Curiae
National Association of
Criminal Defense Lawyers

December 1999